



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY SOUTHWEST REGIONAL OFFICE

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO Eagle Transport of Virginia, Inc. Incident Report No. IR 2010-S-0081

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.34:20, between the State Water Control Board and Eagle Transport of Virginia, Inc., for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations.

SECTION B: Definitions

Unless the context indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "AST" means aboveground storage tank, as defined in Va. Code § 62.1-44.34:14 and 9 VAC 25-91-10.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Eagle" or "Eagle Transport" means Eagle Transport of Virginia, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Eagle Transport of Virginia, Inc. is a "person" within the meaning of Va. Code § 62.1-44.3.
6. "Location" means the Petroleum Products, Inc. Aboveground Storage Tank Bulk Plant 8-2, located at 757 Tower Street (North College Avenue), in Bluefield, Virginia.

7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
8. "Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity. *See* Va. Code § 62.1-44.34:14.
9. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
10. "PPI" means Petroleum Products, Inc.
11. "Site" means the facility, land, road, storm drain(s) and surface water(s) adversely affected by the oil discharge.
12. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 11 (Va. Code §§ 62.1-44.34:14 through 62.1-44.34:23) of the State Water Control Law addresses Discharge of Oil Into Waters.
13. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
14. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
15. "UST" means underground storage tank, as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.
16. "Va. Code" means the Code of Virginia (1950), as amended.
17. "VAC" means the Virginia Administrative Code.

SECTION C: Findings of Fact and Conclusions of Law

1. Eagle operates a carrier trucking company specializing in the transport and delivery of liquid petroleum products in bulk via tractor trailer tankers.
2. On September 9, 2009, DEQ received notification of a discharge of non-highway use diesel fuel at the PPI AST Bulk Plant 8-2. Per reports submitted to DEQ, it appears that a PPI driver discovered product on the ground around the loading rack when he arrived at the Location at approximately 4:00 a.m. PPI began a cleanup response and called Eagle at approximately 6:00 a.m., informing them of the discharge. Action Environmental notified DEQ and Tazewell County Emergency Management personnel of the discharge at approximately 2:00 p.m., on behalf of Eagle. Non-highway use diesel fuel is a

petroleum product, and is included in the definition of "oil" under Va. Code § 62.1-44.34:14.

3. Per written accounts received by DEQ from both Eagle and PPI, an Eagle driver arrived at the Location within approximately an hour after midnight on September 9, 2009. The driver proceeded to offload the non-highway use diesel fuel, delivering a quantity of diesel fuel to one of two manifolded ASTs that was sufficient to cause the automatic overfill alarm on the AST to activate, automatically shutting down the fuel pumps. Although directed by the Eagle dispatcher, who had contacted and was so directed by the PPI dispatcher, to deliver the fuel remaining in the tanker to a PPI UST facility¹ located near the referenced AST location, the driver apparently waited until the auto-shutoff timing mechanism reset, allowing the pressurized delivery equipment to operate again, and resumed offloading operations to the ASTs, until the tanker was empty.
4. DEQ staff investigated the discharge as Incident Report ("IR") No. IR 2010-S-0081. Eagle contacted an environmental consultant, Action Environmental, who in turn contacted local environmental contractor Marshall Miller and Associates ("MM&A"). MM&A arrived at the scene later the same morning and continued the cleanup effort begun by PPI. Pads, booms, and a vacuum truck were used to recapture diesel fuel. The oil/water separator, which was inundated, was pumped. Excavation of soils began.
5. At no time was a sheen reported as being seen on surface waters. It appears that most of the discharged diesel fuel that was not captured soaked into the soil. The Site of the discharge has been a remediation site for a previous petroleum release (PC No. 2000-1000), with an unrelated party. Significant expenditures of state funds have been made for groundwater cleanup at the Site. This work was very near completion. Monitoring wells already existed at the Site. The extent of groundwater impact from the discharge on September 9, 2009 (PC No. 2010-1003) is not yet fully known. One existing monitoring well (MW-18), which previously had no free phase product present, measured 9 feet of product after this discharge. Other monitoring wells at the Site also appear to show free phase product level increases.
6. On September 28, 2009, Eagle submitted a written account of the incident. On October 1, 2009, PPI submitted a written account of the incident.
7. Per figures submitted by PPI, after reconciling inventory with inputs and withdrawals, it appears that approximately 2,801 gallons of diesel fuel was discharged. Per written accounts received by DEQ from both Eagle and PPI, several hundred gallons of diesel fuel were pumped from the oil/water separator, with an additional volume of approximately 2,000 gallons of fuel/water mixture pumped as the oil/water separator was emptied. A total of 328.06 tons of impacted soils were removed for proper disposal.
8. Va. Code § 62.1-44.34:18 prohibits the discharge of oil into or upon state waters, lands, or storm drain systems. Eagle is subject to the statutory prohibition.

¹ The UST facility is located at 716 Virginia Avenue, Bluefield, Virginia.

9. Va. Code § 62.1-44.34:19 requires the reporting of a discharge of oil that enters, or may reasonably be expected to enter, state waters, lands or storm drain systems within the Commonwealth.
10. On November 17, 2009, the DEQ issued a confirmed release letter to Eagle. That letter required submittal of an Initial Abatement Report by December 30, 2009.
11. On December 4, 2009, the Department issued NOV No. NOV-025-1209-GW to Eagle for a discharge of oil to the environment and failure to report the discharge.
12. On December 15, 2009, Department staff met with representatives of Eagle to discuss the incident, discharge, emergency response, spill control and clean-up, and future actions.
13. Also on December 15, 2009, DEQ received an Initial Abatement Report, submitted by MM&A on behalf of Eagle. This report provided details regarding the discharge, site information, initial abatement measures, remediation activities, post-excavation soil sampling and analysis, site restoration, a risk assessment evaluation and recommendations.
14. Based on the results of inspections on September 10, September 23 and October 5, 2009, documentation submitted on September 28, October 1 and December 15, 2009, and the meeting held on December 15, 2009, the State Water Control Board concludes that Eagle has violated Va. Code § 62.1-44.34:18, which prohibits the discharge of oil into or upon state waters, lands, or storm drain systems, and Va. Code § 62.1-44.34:19, which requires the reporting of a discharge of oil that enters, or may reasonably be expected to enter, state waters, lands or storm drain systems within the Commonwealth. These violations are as described in paragraphs C(1) through C(7), above.
15. In order for Eagle to complete its return to compliance, DEQ staff and representatives of Eagle have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.34:20 and 62.1-44.34:18(C)(1), the Board orders Eagle, and Eagle agrees to:

1. Perform the actions described in Appendix A of this Order;
2. Pay a civil charge of \$28,117.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order; and
3. Reimburse DEQ \$1,750.52 within 30 days of the effective date of the Order for costs incurred in investigating the oil discharge.

Payment for the total amount of \$29,867.52 shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia" and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Eagle shall include its Federal Employer Identification Number (FEIN) with the payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Petroleum Storage Tank Fund (VPSTF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Eagle for good cause shown by Eagle, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Eagle admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Eagle consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Eagle declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Eagle to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Eagle shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Eagle shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Eagle shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which Eagle intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Eagle. Nevertheless, Eagle agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. Eagle petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Eagle.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Eagle from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Eagle and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Eagle certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Eagle to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Eagle.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Eagle voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2010.

Dallas R. Sizemore, Regional Director
Department of Environmental Quality

Eagle voluntarily agrees to the issuance of this Order.

Date: 6/7/2010 By: Robert B. Heinisch VP Safety
Robert B. Heinisch (Title)
Eagle Transport of Virginia, Inc.

NC
~~Commonwealth of Virginia~~
City/County of Nash

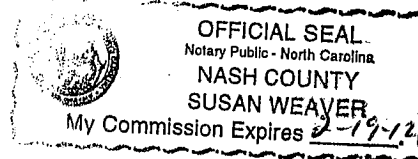
The foregoing document was signed and acknowledged before me this 7th day of
June, 2010, by Robert B. Heinisch who is
VP Safety of Eagle Transport of Virginia, Inc., on behalf of the
corporation.

Susan Weaver
Notary Public

19970380098
Registration No.

My commission expires: 2-19-2012

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

1. Creek Sampling

Eagle is required to conduct groundwater monitoring as specified in Item 2 below. Beaver Pond Creek shall also be sampled, during the first quarterly monitoring event, for Total Petroleum Hydrocarbons – Diesel Range Organics (“TPH-DRO”) by EPA method 8015 and Semi-Volatile Organic Compounds (“SVOCs”) by EPA method 8270. Data from the first quarterly monitoring event will be used to determine the necessity of additional creek sampling.

2. Groundwater Monitoring

Groundwater monitoring wells are established at the discharge Site. Eagle shall begin quarterly monitoring, for a period of not less than one year, of these established groundwater monitoring wells. All results of the quarterly sampling shall be submitted to the Department for review and validation. Letter reports documenting monitoring activities and sampling results shall be submitted on a quarterly basis. Each quarterly report should document well gauging and Light Non-Aqueous Phase Liquid (“LNAPL”) gauging data. The first quarterly report should also include groundwater sampling for TPH-DRO by EPA method 8015 and SVOCs by EPA method 8270. The first quarterly monitoring report is due on or before **June 3, 2010**. Data from the first quarterly monitoring event will be used to determine the necessity of additional groundwater sampling. If LNAPL accumulations remain in the monitoring wells impacted by this discharge, additional dual-phase extraction or aggressive fluid/vapor recovery events may be necessary. The second quarterly report is due on or before **September 3, 2010**. The third quarterly report is due on or before **December 3, 2010**. The fourth quarterly report is due on or before **March 3, 2011**.

3. Notification

Within 14 days of completion, Eagle shall submit written notification to the DEQ of the completion of all action items required by this Order. If completion of an item does not occur in accordance with this schedule, Eagle shall submit written notification within three (3) business days after the due date advising the DEQ when it plans to complete the item.

4. Contact

Unless otherwise specified in this Order, Eagle shall submit all requirements of Appendix A of this Order to:

**Ms. Ruby Scott
Compliance Auditor
VA DEQ – Southwest Regional Office
P. O. Box 1688
Abingdon, Virginia 24212**